



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

*Marion Co*

Honorable Homer P. Rainey, President  
The University of Texas  
Austin, Texas

Dear Dr. Rainey:

Opinion No. 0-2846

Re: Whether or not the City Council of Galveston and the Board of Regents of the University of Texas have the power to enter into a contract abrogating the existing lease contract between the City and the University in regard to the operation of John Sealy Hospital, and to make a new contract for the hospitalization of indigent City patients.

This will acknowledge receipt of your letter of December 14, 1940, requesting an opinion from this department, your letter being as follows:

"For many years The University of Texas and the City of Galveston have been operating the John Sealy Hospital in Galveston under a contract, a copy of which is enclosed. In recent months we have been going through the process of making some reorganizations in the administration of the Medical Branch of the University and of the John Sealy Hospital, which The University of Texas owns. In these reorganizations we have come to the place where the City of Galveston and the Regents of The University of Texas desire to abrogate the present contract and thus to return the John Sealy Hospital to the control of The University of Texas. In other words, we desire to return to the status quo ante by the mutual abrogation of the present contract.

"Once this contract is abrogated we mutually desire then to enter into a new contract with the City of Galveston for the care of their indigent sick. It is proposed under

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the new contract that the City of Galveston will pay to The University of Texas the sum of \$40,000 per year in return for which The University of Texas will agree to provide hospitalization for the indigent sick of the City of Galveston. The city, through its health department, will designate those that they regard as indigent.

"It is the desire of both the City of Galveston and the Regents of The University of Texas to make this new arrangement under present laws, if possible, and we are, therefore, asking for an opinion of your department upon the following questions:

"1. Whether or not the City Council of the City of Galveston and the Board of Regents have the power to enter into a contract abrogating the existing lease contract between the City and the University in regard to the operation of the John Sealy Hospital.

"2. Whether or not the Board of Regents have power and authority to operate the John Sealy Hospital in connection with the Medical School at Galveston.

"3. Whether or not the Board of Regents have the power to enter into a contract with the City of Galveston to take care of the indigent patients of the City who may be designated by the health officer of the City.

"4. Whether or not an agreement on the part of the City to pay the University \$40,000 a year for an indefinite period of time for the care and hospitalization of indigent patients would create a debt against the City which would be prohibited by the Constitution of Texas.

"5. In the event that present laws will not permit us to make the new arrangement which I have outlined above, we would greatly appreciate it if your department would suggest to us the type of legislation which we should have to ask the Legislature to pass in order to enable us to make the new desired arrangement."

We answer your questions categorically:

1. The City Council of the City of Galveston

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and the Board of Regents of the State University do have the power to enter into an agreement or contract abrogating the existing lease contract between them in regard to the operation of the John Sealy Hospital.

The City of Galveston at present is operating the John Sealy Hospital under a long-time lease from the University of Texas, the owner of the Hospital.

Irrespective of the question of the validity of the lease by which the University of Texas let the Hospital to the City of Galveston, (and we are not at all implying that there was any vice in the transaction) the parties mutually may abrogate the lease, and thus restore the status quo ante. The cancellation of the reciprocal covenants of the parties constitutes reciprocal considerations for the new contract of abrogation.

2. Upon the execution of the contract or agreement abrogating the present lease, the Hospital will be, of course, restored to the University of Texas, and the University will own and hold the same as of the original estate. The Board of Regents of the University, therefore, will then have the power and authority to operate the Hospital in connection with the Medical School at Galveston, if such operation be necessary, or even incidentally necessary, to the proper operation of the Medical School.

3. Upon general principles of corporate law, the Board of Regents of the University would have the power to enter into a contract with the City of Galveston to take care of the indigent patients of the City, if the doing so was reasonably necessary as an incident to the operation of its Medical School at Galveston. The Board would not have the authority or power, however, to make such a contract with the City of Galveston except as an incident to the Board's power to operate the Medical School. The State University is operating a medical school, not a public hospital.

4. Such an agreement on the part of the City, including its promise to pay the University \$40,000.00 a year for an indefinite period of time for the care and

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hospitalization of indigent patients, would not create a debt against the City which would be prohibited by the Constitution of Texas, nor would it create a debt at all for the simple reason that such a contract would be voidable for indefiniteness of duration, and could be terminated by either party at will.

Such an undertaking could be entered into by the City only through contracts for one year at a time to avoid the constitutional requirement for provision for payment.

APPROVED JAN 2, 1941

*Homer P. Rainey*  
FIRST ASSISTANT  
ATTORNEY GENERAL

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Ocie Speer*  
Ocie Speer  
Assistant

OS-MR

APPROVED JAN 2, 1941

*Guadalupe Mann*  
ATTORNEY GENERAL OF TEXAS

